

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-4177

United States of America,

Appellee,

v.

Zaccheus Scott Hale,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: October 7, 2005

Filed: November 17, 2005

Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Zaccheus Scott Hale pled guilty to conspiring to distribute more than fifty grams of actual methamphetamine, in violation of 21 U.S.C. § 846. After granting the government's substantial-assistance downward-departure motion under 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1, the district court¹ departed from a statutory minimum of life imprisonment to a sentence of 300 months in prison and ten years of supervised release. On appeal, Hale's counsel has moved to withdraw and filed

¹ The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court should have departed even further.

However, as a district court's discretionary decision not to depart downward is unreviewable, United States v. Frokjer, 415 F.3d 865, 875 (8th Cir. 2005), the extent of a district court's downward departure is also not reviewable in an appeal by the defendant. See United States v. Noe, 411 F.3d 878, 885 (8th Cir. 2005), cert. denied, Schultz v. United States, ___ U.S. ___, 2005 WL 1669602 (Oct. 3, 2005).

Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we conclude that there are no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw. We deny Hale's motion for the appointment of new counsel on appeal.
